

REMARKS

Summary of Office Action

Claims 1-12 are pending in this case.

The specification has been objected to for various informalities.

Claim 1 has been rejected for obviousness-type double patenting over claims 1 and 3 of U.S. Patent No. 6,745,391, issued on parent Application No. 09/293,201.

Claim 1 has been rejected under 35 U.S.C. § 102(b) as being anticipated by Lett et al. U.S. Patent No. 5,592,551 ("Lett"). Claims 1-12 have been rejected under 35 U.S.C. § 102(b) as being anticipated by Youman et al. U.S. Patent No. 5,629,733 ("Youman"). Claim 1 has been rejected under 35 U.S.C. § 103(a) as being obvious from Kostreski et al. U.S. Patent No. 5,734,589 ("Kostreski") in view of Lett.

Summary of Applicants' Reply

Applicants have amended the specification to provide a more descriptive title and to correct minor typographical errors. Applicants have amended claim 1 in order to more particularly define the claimed invention. No new matter has been added and these amendments are fully supported by the originally-filed application (see, e.g., applicants' specification at page 23, lines 33-35).

Applicants are also submitting concurrently herewith a terminal disclaimer relative to the parent patent.

The Examiner's objection and rejections are respectfully traversed.

Applicants' Reply to the Specification Objection

The specification has been objected to as lacking a descriptive title and for a typographical error. Applicants have amended the specification to provide a more descriptive title and correct the typographical error. Applicants respectfully submit that the specification, as amended, should not be objectionable and request that the objection be withdrawn.

Applicants' Reply to the
Double Patenting Rejection

Claim 1 has been rejected for obviousness-type double patenting over claims 1 and 3 of U.S. Patent No. 6,745,391, issued on parent Application No. 09/293,201.

Enclosed herewith is a Terminal Disclaimer Under 37 C.F.R. § 1.321 (b,c) disclaiming the portion of the term of any patent to be granted on this application which would extend beyond the expiration date of U.S. Patent No. 6,745,391.¹ Therefore, applicants respectfully request that the double patenting rejection be withdrawn.

The Director is hereby authorized to charge \$130.00 in payment of the fee set forth in 37 C.F.R. § 1.20(d) to Deposit Account No. 06-1075.

¹ It is applicants' and assignee's intention that if any change in the patent statutes delays the expiration of parent patent 6,745,391, or if said patent 6,745,391 is hereafter awarded patent term adjustment under 35 U.S.C. § 154(b), then the date beyond which the term of any patent to issue on this application is disclaimed shall change along with the expiration date of the parent patent.

Applicants' Reply to the Prior Art Rejections

Lett

Claim 1 has been rejected under 35 U.S.C. § 102(b) as being anticipated by Lett. Applicants respectfully traverse this rejection.

Applicants' invention, as defined by amended independent claim 1, is directed toward a system configured with an EPG database. The system includes, *inter alia*, a processor for maintaining the EPG database with program listings for a plurality of regularly unscrambled television channels. The processor updates the EPG database for a program listing of a program transmitted, without scrambling on one of the regularly scrambled television channels, to a user that is a non-subscriber to the transmitted program.

Lett generally describes systems and methods for purchasing pay-per-view events. The user tunes to a station and cannot view the programming until the user purchases the program (Lett, col. 12, lines 29-40). The user may select an option to view a free preview of a program for a short duration before the user purchases the program (Lett, col. 14, lines 53-60).

Contrary to the Examiner's assertions, applicants respectfully submit that Lett does not show or suggest a processor that updates the EPG for a program listing that is transmitted without scrambling, as defined by applicants' claim 1. The Examiner argues that Lett shows a processor that updates a program listing in its discussion of data associated with a purchase being stored and later transmitted to complete the purchase (Lett, col. 10, lines 55-60). However, in Lett the

data that is stored is not used to update the EPG database for a program listing, but is used to purchase a pay-per-view program. In particular, the data relating to the program purchase is transmitted to a system manager and does not update EPG database entries, let alone a program listing for the regularly scrambled television program. Moreover, even though a free preview is displayed for the user for one of the pay-per-view channels, nowhere does Lett show or suggest any type of update or change to the program listing that corresponds to the free previewed program. Thus, Lett does not show or suggest all the limitations of applicants' claim 1.

Youman

Claim 1-12 have been rejected under 35 U.S.C. § 102(b) as being anticipated by Youman. Applicants respectfully traverse this rejection.

Youman generally discusses an electronic program schedule system. In some embodiments, a user may select a message option to receive messages from the cable operator (Youman, col. 19, lines 43-64). Messages may include information about free HBO programs (Youman, FIG. 28). Selecting a channel that corresponds to a service not subscribed to by the user may cause an ordering menu to appear (Youman, col. 27, lines 42-54).

Contrary to the Examiner's contentions, applicants' claim 1 patentably improves upon Youman by updating the EPG database for a program listing of a program transmitted, without scrambling on one of the regularly scrambled television channels, to a user that is a non-subscriber to the transmitted program, as defined by applicants' claim 1. In Youman, the

system displays an order form for a channel to which the user is not a subscriber when the user selects a pay-per-view program (Youman, col. 19, lines 5-10 and lines 31-40). However, in the Youman system, changing a setting to cause either the display or non-display of an order form (based on whether the user is or is not a subscriber) is not the same as an update to a program listing of a program, transmitted without scrambling, to a non-subscribing user. Therefore, Youman does not show or suggest all the limitations of applicants' claim 1.

With respect to applicants' dependent claim 4, applicants respectfully submit that Youman does not show or suggest a detector for detecting whether a regularly scrambled television channel is now unscrambled. Applicants disagree with the Examiner's assertion that because a message indicating free HBO is displayed, the system detects a new channel is going to be available (Office Action, page 6). In particular, the message information, indicating the free service availability, that the EPG displays is received from the cable operator, making it unnecessary for the EPG to detect that the free service is available (Youman, col. 19, lines 42-50). Moreover, displaying information about a service that is going to be available and unscrambled at a future time is not the same as detecting that the service is now unscrambled, as required by applicants' claim 4. Thus, Youman does not show or suggest all the limitations of applicants' claim 4.

Kostreski and Lett

Claim 1 has been rejected under 35 U.S.C. § 103(a) as being obvious from Kostreski in view of Lett. Applicants respectfully traverse this rejection.

Application No. 10/823,993
Amdt. Dated April 18, 2008
Reply to Office Action of October 22, 2007

The Examiner acknowledged that Kostreski does not show or suggest all the limitations of applicants' claim 1 and cites Lett as allegedly making up for these deficiencies. In particular the Examiner relies on Lett to show a processor that updates the EPG database for a program listing of a program transmitted without scrambling (Office Action, page 9).

For the reasons set forth above, applicants respectfully submit that Lett does not show or suggest a processor that updates the EPG database for a program listing of a program transmitted without scrambling. Therefore, Lett does not make up for the deficiencies of Kostreski relative to the rejection. Accordingly, Kostreski and Lett, whether taken alone or in combination, do not show or suggest all the limitations of applicants' claim 1.

For at least these reasons, applicants' claim 1, and claims 2-12 which depend, directly or indirectly, therefrom are patentable over the prior art of record.

Application No. 10/823,993
Amdt. Dated April 18, 2008
Reply to Office Action of October 22, 2007

Conclusion

For the reasons stated above, applicants respectfully submit that this application is in condition for allowance. Reconsideration and prompt allowance of this application are respectfully requested.

Respectfully submitted,

/Gall C. Gotfried/
Gall C. Gotfried
Registration No. 58,333
Agent for Applicants
ROPES & GRAY LLP
Customer No. 75563